

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 31 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICHARD EUGENE CHAMPION,

Petitioner - Appellant,

v.

JOHN MARSHALL,

Respondent - Appellee.

No. 06-55609

D.C. No. CV-05-01807-RSWL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

California state prisoner Richard Eugene Champion appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 2253. We review de novo a district court's decision to deny a § 2254 petition, *see Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123, 1126 (9th Cir. 2006), and we affirm.

We reject as foreclosed the State's contention that there is no federally protected liberty interest in parole release in California. *See id.* at 1127-28.

Champion contends that the 2001 decision of the California Board of Prison Terms (the "Board") finding him unsuitable for parole violated his due process rights. Although Champion failed to exhaust this claim in state court, we may deny an unexhausted claim on the merits "when it is perfectly clear that the applicant does not raise even a colorable federal claim." *Cassett v. Stewart*, 406 F.3d 614, 624 (9th Cir. 2005). We conclude that Champion has not raised a colorable due process claim because "some evidence" supports the Board's decision, including an unfavorable psychiatric report and Champion's lack of verified parole plans. *See Sass*, 461 F.3d at 1129.

We also conclude that the California Superior Court's rejection of Champion's ex post facto challenge was neither contrary to, nor involved an unreasonable application of, clearly established federal law, as established by the Supreme Court. *See* 28 U.S.C. § 2254(d)(1); *see also Cal. Dept. of Corrections v. Morales*, 514 U.S. 499, 504-05 (1995) (explaining that the ex post facto clause

prohibits increasing punishment beyond that in effect at the time a crime is committed).

Next, we conclude that Champion's contention that the Board violated his due process rights by decreasing the frequency of his parole suitability hearings is waived. *See Belgarde v. State of Montana*, 123 F.3d 1210, 1216 (9th Cir. 1997).

Finally, we construe Champion's "Motion of Supplemental" as a motion to supplement the record. So construed, the motion is denied. *See Fed. R. App. P.* 10(a).

AFFIRMED.